

REMARKS

Claims 12 - 14, 25 - 27, and 29 - 31 are pending in the application. Claims 1 - 11, 15 - 24 and 28 are cancelled to reduce the issues for appeal. Claims 31 and 32 are added.

Claims 12 - 14, 25 - 27, 29 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 5,316,352, Smith, in view of 3M VMB™ Double Coated Acrylic Foam Tapes and Adhesive Transfer Tapes Technical Data, European Patent EP 0095915 A1, Cook, and U. S. Patent No. 5,961,154, Williams et al. The Examiner alleges that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a double-sided adhesive, closed-cell acrylic foam tape and overlap the tape ends, since Smith discloses duct tape and 3M VMB™ Double Coated Acrylic Foam Tapes and Adhesive Transfer Tapes Technical Data teaches a double-sided adhesive foam, and a closed cell acrylic foam tape the Examiner further alleges that the aforementioned double-sided tape would be ideal for use in the exterior industrial applications which can replace duct tape and is ideal for bonding a variety of substances, including most metals. The Examiner further alleges that Cook is evidence that it is commonly known in the art to apply a tape having first and second ends forming an overlap over the first end and contact the first end to improve the seal form between the end of the wrapped tape.

The rejection of claims 12 - 14, 25 - 27, 29 and 30 as being rejected under 35 U.S.C. § 103(a) is traversed. European Patent ('915) to Cook is related to a field of an invention regarding automatically wrapping tape around a stack of paper banknotes. The art of wrapping paper banknotes is non-analogous to the art of sealing an overhead pipe conduit system. One having ordinary skill in the art at the time the invention was made would not look into the art of wrapping paper bank notes with a tape when researching for a tape suitable for an overhead pipe conduit system, and a bank would never use two-sided tape over bank notes. In fact, patent '915 to Cook only discloses bonding the ends of the tape together. The tape is not bonded to the banknotes.

It appears that the Examiner is not considering the claims as a whole and also has not fully considered the Declaration under 37 C.F.R. § 1.132 previously filed with the Amendment dated June 19, 2003 which is applicable to the current cited references. In the aforementioned Declaration, the Applicant stated that it is critical that the interior is smooth so that there is no obstruction when the bundle of pipe lines are pulled through the conduit. As a result of the Declaration, the Examiner indicated that the declaration overcame the rejection of the claims based on Kanao '380 (and also Shea '497). However, now the Examiner is rejecting the claims as being unpatentable over U. S. Patent No. 5,316,352 to Smith and U. S. Patent No. 5,961,154 to Williams et al. Neither of these disclosures show or disclose smooth interiors at the joint because Smith discloses grooves for holding annular gaskets 14 and Williams discloses a slip collar in the interior of the pipes. The smooth interiors at the joint of the present invention is formed by the two pipes abutting each other and the means for sealing the joint being placed on the exterior of the joint.

Regarding U. S. Patent No. 5,316,352 issued to Smith, Smith is related to a pipe coupling for an underground pipe which is non-analogous to the art of sealing an overhead pipe conduit system. A person having ordinary skill in the art would not look to underground pipes when designing an above-ground and suspended conduit system. Underground pipes must be built to withstand being pushed through the ground during installation and the weight of the ground above it over time. An above-ground conduit system does not require these features. However, even if the Examiner finds that an underground pipe system is analogous art to an above-ground beverage conduit system, Smith does not show or disclose wrapping the pair of pipe square cut terminal ends that abut each other with a strip of tape. Smith offers four embodiments of his invention. In Smith, only the embodiments as shown in Figures 8 and 17 show the bell faces 23 in abutting formation. However, in this embodiment, a pair of annular gaskets 14 are spaced from the bell faces and positioned within a groove (not numbered) in the interior of the bell faces 23. Therefore, the pipes (bell 12) are not smooth as required in the independent claims 12, 25, 30 and 31. Further, a nipple pipe 16 is provided within

the bell shaped pipe and is sized so that the nipple's unbeveled outer surface extends beyond each gasket in each opposing bell 20. This configuration ensures a fluid-type seal, even if the nipple 16 is over inserted. (Column 5, Lines 43 - 46.) Smith does not disclose positioning tape around the joint of the abutting bell-shaped faces 23. Smith requires an internal gasket to provide the sealed joint. Therefore, Smith teaches away from the present invention, which requires a smooth interior so that a bundle of beverage lines can be snaked through the smooth interior of the conduit and not get caught on either a gasket, the groove for positioning the gasket, or a nipple as shown and disclosed in Smith. The embodiment shown in Figure 5 does not disclose that the bell faces 23 essentially abut each other as required in the claims of the present invention. Instead, as disclosed in Column 5, Lines 58 - 61, an annular bearing-ring 26 is provided between the bell mount faces 23 positioned over the nipple 16. Smith further states in Lines 64 - 69 that the rings have an inside diameter dimension and an outside diameter dimension sufficient to form an ample bearing surface between the bell faces. Smith then discloses that a layer of adhesive tape, standard duct tape, is applied around the outside of the joint to prevent dirt from entering the coupling while the pipe is being pushed into place under ground. In another embodiment, as shown in Figures 6 and 7, the bell mouth faces 23 of the pipe are spaced from each other to provide a retaining ring 34 therebetween. In yet another embodiment shown and disclosed in Figure 16, the standard bell face 23 will abut squarely against a bearing face 41 of nipple 16. Smith discloses that tape may be applied around the point of the union of nipple 16 and bell faces 23. In each of these aforementioned embodiments, the bell faces 23 do not abut each other. It is only in these embodiments that tape is applied around the outside of the joint strictly to prevent dirt from entering the coupling while the pipe is being pushed into place. There is no suggestion that the tape is used to provide a seal between the two adjoining pipes to maintain them together in the overhead beverage conduit. The sealed joint in Smith is formed internally of the pipes 12 and 18. The tape, as disclosed in Smith in the embodiments where the bell faces do not abut, is used simply as a cover to prevent debris from falling into the joint. Therefore, there would be no suggestion to modify the Smith joint with the tape as disclosed in the 3M data

sheets; and the Examiner conclusion of obviousness is based on improper hindsight. The Examiner has provided no formulation of a proper obvious rejection. There is no teaching or suggestion in Smith to use tape to seal the joint. Further, the tape that is applied to the Smith versions of the pipe coupling would not require double-sided adhesive tape.

Regarding U. S. Patent No. 5,961,154 issued to Williams et al., the Examiner alleges that Williams teaches a coupling 20 to provide a device which can be easily and quickly affixed to a joint between two tubing sections. The Examiner alleges that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a device which can easily and quickly affix to a joint between two tubular sections as taught by Williams. Williams does not disclose a clamp over foam tape, but instead discloses a clamp over a sealant having a putty-like consistency. Further, Williams does not show or disclose a tongue extending from a clampable end of the clamping collar as required in claim 26. Neither Williams nor the other cited prior art discloses the tongue of the clampable ends of the clamp positioned directly over the overlap of tape. In addition, Williams discloses a joint having a clamping or slip collar positioned in the interior of the pipes 68 and 70. The slip collar 60 has a rib 62 which separates the two ends of the pipes 68 and 70. Therefore, the ends of the pipes 68 and 70 do not abut each other as required in the Applicant's claims. Since the joint seal is formed internally in Smith, there is no teaching or suggestion to include a clamp as disclosed in Williams on the underground pipes in Smith.

Regarding the 3M VMB™ Double Coated Acrylic Foam Tapes and Adhesive Transfer Tapes Technical Data, there is no suggestion to combine the 3M tape as disclosed in the present invention with the pipe coupling in Smith or Williams. There is no suggestion in the 3M technical data sheets to use the double-sided adhesive tape to seal an above-ground pipe joint for a beverage distribution system. It appears that the Examiner is using the improper rationale of "obvious to try" because the prior art of the Smith and Williams gives no indication of the parameters discussed in the 3M VMB™ technical data sheets as being critical to provide a sealed joint. In fact, the joints as disclosed in Smith and Williams are

formed in an entirely different manner than with tape. The Examiner is again directed to review the declaration under 37 C.F.R. § 1.132 filed on June 19, 2003 previously submitted by the Applicant, which detail the unexpected and superior results using the VMB™ Double Coated Acrylic Foam Tape.

It is respectfully submitted that the Examiner has failed to give adequate consideration and weight to the Declaration filed on June 19, 2003. It is submitted that the Declaration sets forth specific facts and indicia of non-obviousness which have not been accorded proper consideration and weight by the Examiner. In particular, the Declaration sets forth that the Declarant has numerous years of experience in the art, and therefore, is properly considered to be an expert in the art. Further, the Declaration sets forth that as an expert in the art, the Declarant would not be taught or suggested the present invention by the references as combined in the Examiner's rejection. *Prima facie* obviousness is but a procedural mechanism allocating the burdens of going forward and persuasion as between Examiner and Applicant. Once the Applicant makes a showing of facts that rebuts the *prima facie* case, the *prima facie* inference disappears. Then the Examiner must consider all of the evidence anew and should not characterize the *prima facie* case as "strong" or "weak." An expert's affidavit or declaration of firsthand practical knowledge of unsolved needs in the art is evidence of the state of the art. See generally, *In re Piasecki*, 745 F. 2d 1468, 223 USPQ 285 (Fed. Cir. 1984). It is submitted that the Declaration sets forth facts and other indicia of non-obviousness and overcomes the unsupported assertion of obviousness set forth in the Examiner's rejection of the claims in the present application. If given proper weight and consideration by the Examiner, it is submitted that the Declaration traverses and overcomes the Examiner's *prima facie* obviousness rejection of the claims, requiring the Examiner to come forth with further evidence of obviousness, which has not been done. Therefore, it is respectfully submitted that claims in the present application are allowable over the prior art of record.

New claims 31 and 32 have been added to place existing claims in Jepson format for an improvement in a sealed joint for an overhead pipe system for a

beverage distribution system. Claim 31 includes all of the requirements of claims 12, 13, and 14. Claim 32 includes all of the requirements of claim 30.

This Supplemental After Final Amendment: (1) does not raise new issues that would require further consideration and/or search, since the proposed amendments incorporate previously recited limitations from dependent claims into the independent claims and these limitations have been previously considered and searched by the Examiner; (2) does not raise the issue of new matter, since the proposed amendments have support in the originally filed application including the specification, claims and drawings; (3) does place the application in better form for appeal by materially reducing and/or simplifying the issues for appeal; and/or (4) does not present additional claims without cancelling a corresponding number of finally rejected claims. The Supplemental After Final Amendment was necessitated due to the Examiner's reliance on the newly cited reference to U. S. Patent No. 5,316,352 (Smith) and U. S. Patent No. 5,961,154 (Williams et al.). This Amendment could not have been earlier presented, since the Examiner had not relied on the Smith and Williams et al. references previously, so this is Applicant's attorney's first opportunity to address the Examiner's rejection based on this reference.

This Amendment should place this case in condition for issue. Such action is requested.

Respectfully submitted,

YOUNG & BASILE, P.C.



Darlene P. Condra
Attorney for Applicant(s)
Registration No. 37113
(248) 649-3333

3001 West Big Beaver Rd., Suite 624
Troy, Michigan 48084-3107

Dated: April 12, 2005
DPC/dge